

SEVENTEENTH DAY
(Tuesday, February 19, 1991)

The Senate met at 9:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sims, Tejeda, Turner, Whitmire, Zaffirini.

Absent-excused: Truan.

A quorum was announced present.

The Reverend Father Nicholas C. Triantafilou, Transfiguration Greek Orthodox Church, Austin, offered the invocation as follows:

O Great God of Love, O Great God of Hope, O Great God of Justice, O Great God of Peace, we lift up our entire world before You. During these troubled times, words seem to boomerang back to us. Even thoughts somehow lack power to be sustained. The Psalmist, however, instructs us so wisely when he writes, "Be still and know that I am God." (Psalm 46:10)

In reality, dear God, You know well that most of us throughout the world are indeed still deep within ourselves. We pray unceasingly during these days—we pray, that is, inaudibly deep within our core beings. We trust in Your deliverance as we cry out for peace in the Persian Gulf and as we seek for the restoration and, if need be, the establishment of homelands. We trust in Your deliverance as we yearn for mutual understanding and mutual acceptance among the people in Central American countries, in South Africa, in Eastern Europe, in China, and yes, here in our home—America. Justice for all is Your teaching. Justice for all is our goal.

We thank You, dear God, for the eternal touch of Your love that death cannot destroy, as we pray for unending rest for those soldiers and civilians who have been denied further extension of life on this side of Your Kingdom. We pray for strength and comfort to come to their families. We pray for clear vision to be constantly with our United States President, George Bush, and all world leaders.

Here in our home State, our Governor, Ann W. Richards, and Lieutenant Governor, Bob Bullock, and all elected and appointed officials serve us with integrity, O God. For each of them, we praise Your Holy Name. In service to You and to us, may they, in turn, find fulfillment. Help us this day and every day to assist as many of the disenfranchised as we possibly can. Help us this day and every day to affirm the marvelous work so many of our fellow citizens bring forward to the betterment of our society and Your people.

Again we pray—help us to be still, in order that Your Presence may thunderously lead us to a world of holiness. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

Senator Truan was granted leave of absence for today on account of important business on motion of Senator Brooks.

CO-AUTHORS OF SENATE BILL 376

On motion of Senator Harris of Tarrant and by unanimous consent, Senators Johnson and Glasgow will be shown as Co-authors of **S.B. 376**.

CO-AUTHOR OF SENATE BILL 231

On motion of Senator Carriker and by unanimous consent, Senator Dickson will be shown as Co-author of **S.B. 231**.

RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate the following enrolled resolutions:

S.C.R. 23

S.C.R. 28

SENATE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions were introduced, read first time and referred to the Committee indicated:

S.C.R. 42 by Haley Administration
Creating a special committee to designate Texas State Artists in two categories of art to serve concurrently a term of one year.

S.C.R. 43 by Parker Administration
Directing the State Preservation Board to declare as surplus property the gazebo currently located on the southeast grounds of the Capitol and transfer that property to the City of San Antonio.

S.B. 453 by Ellis Health and Human Services
Relating to corporal punishment in public schools.

S.B. 454 by Ellis Criminal Justice
Relating to the creation of the offenses of hate crime and institutional vandalism; providing penalties.

S.B. 455 by Ellis Criminal Justice
Relating to punishment for aggravated assault.

S.B. 456 by Ellis Economic Development
Relating to state liability for indemnification of podiatrists.

S.B. 457 by Leedom Economic Development
Relating to certain reciprocal arrangements for the collection of overpayments of unemployment benefits.

S.B. 458 by Ellis Intergovernmental Relations
Relating to the authority of the Harris County Flood Control District to provide recreational facilities and esthetic improvements in conjunction with flood control projects.

S.B. 459 by Ellis State Affairs
Relating to the promotion of the use of toll roads.

S.B. 460 by Tejeda, Zaffirini Intergovernmental Relations
Relating to the use of school crossing guards in municipalities and counties.

S.B. 461 by Leedom Intergovernmental Relations
Relating to the validation of certain annexations by and a description of the boundaries of the Dallas County Water Control and Improvement District No. 6.

- S.B. 462** by Moncrief Criminal Justice
Relating to the availability of defenses and to the admissibility of certain evidence in prosecution of certain assaultive offenses.
- S.B. 463** by Moncrief Health and Human Services
Relating to the screening of employees, volunteers, and inmates in jails and other county correctional facilities for tuberculosis.
- S.B. 464** by Moncrief Criminal Justice
Relating to eliminating the promiscuity defense for a person who sexually assaults a child.
- S.B. 465** by Moncrief Criminal Justice
Relating to the guardian-incompetent special relationship section of the Penal Code.
- S.B. 466** by Johnson, Ellis Economic Development
Relating to municipal regulation of the public possession of open containers of alcoholic beverages.
- S.B. 467** by Harris of Tarrant Economic Development
Relating to the regulation of real estate appraisers; transferring the regulation of certain real estate appraisers from the Texas Real Estate Commission to the department of licensing and regulation; providing penalties.
- S.B. 468** by Harris of Dallas Economic Development
Relating to the regulation of pawnshops; providing for the repeal of Subsection (c) of Section 121 of Chapter 780, Acts of the 71st Legislature, Regular Session.
- S.B. 469** by Tejeda Health and Human Services
Relating to restrictions on the location of vending machines containing tobacco products; providing a criminal penalty.
- S.B. 470** by Tejeda Health and Human Services
Relating to a prohibition of cigarette or other tobacco product advertising within 1,000 feet of a school or by a mass transit authority.
- S.B. 471** by Ellis Jurisprudence
Relating to the redemption period allowed on property sold for taxes.
- S.B. 472** by Haley Economic Development
Relating to state and local permits.
- S.B. 473** by Dickson Health and Human Services
Relating to medical staff membership or privileges for a doctor of chiropractic.
- S.B. 474** by Barrientos Economic Development
Relating to the adoption by a home-rule municipality of a program or programs designed to reasonably increase participation by minority business enterprises in public contract awards.
- S.B. 475** by Barrientos Criminal Justice
Relating to deferral of adjudication and dismissal of certain cases on commitment of a chemically dependent person to a treatment facility.
- S.B. 476** by Dickson Economic Development
Relating to the definition of "benefit year" under the Texas Unemployment Compensation Act.
- S.B. 477** by Krier, Lucio State Affairs
Relating to the number of charitable raffles that an organization may hold in a calendar year.

S.B. 478 by Barrientos Health and Human Services
Relating to the governing board of the Texas School for the Deaf.

S.B. 479 by Barrientos Education
Relating to the creation of a statewide media task force on dropout prevention.

S.B. 480 by Barrientos Education
Relating to a report submitted to the legislature by the Central Education Agency about the statewide dropout rate.

S.B. 481 by Barrientos Education
Relating to informing parents in a parent involvement and education program about other assistance programs available to the parent.

S.B. 482 by Armbrister Criminal Justice
Relating to the purposes for which a local crime stoppers program may use repayments of rewards.

S.B. 483 by Bivins Intergovernmental Relations
Relating to a temporary absence in the office of county judge or county commissioner; validation of certain temporary county appointments.

S.B. 484 by Bivins Criminal Justice
Relating to the definitions of culpable mental states for the purposes of criminal prosecutions.

S.B. 485 by Bivins Criminal Justice
Relating to promiscuity as a defense to prosecution of a sexual assault of a child or indecency with a child and to the admissibility of evidence relating to promiscuity.

S.B. 486 by Bivins Finance
Relating to modification of certain disability retirement benefits payable by the Employees Retirement System of Texas.

S.B. 487 by Harris of Tarrant Criminal Justice
Relating to the notification of certain statewide and national criminal information systems when a warrant is issued for a juvenile.

S.B. 488 by Harris of Tarrant Criminal Justice
Relating to fingerprinting and photographing certain children referred to juvenile court.

S.B. 489 by Zaffirini, Lucio, Tejeda Natural Resources
Relating to surplus water diverted by cities and towns from an international stream.

S.B. 490 by Rosson State Affairs
Relating to entering into contracts with adjoining states for the improvement of certain public roads and highways.

SENATE RESOLUTION 204

Senator Glasgow offered the following resolution:

S.R. 204, Recognizing February 19, 1991, as "Denton County Day" at the Capitol.

GLASGOW
CARRIKER
HARRIS OF TARRANT

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Glasgow was recognized and introduced a very large delegation of citizens, distinguished guests and officials of Denton County seated in the gallery, all of whom were here in recognition of "Denton County Day."

The Senate extended a warm welcome to the delegation.

(Senator Brooks in Chair)

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate John W. O'Brien, who retired from State service on January 31, 1991, after 15 years.

Mr. O'Brien, accompanied by his wife, Juanita and daughter, Nancy O'Brien Collins of Elgin, was escorted to the President's Rostrum.

The President presented Mr. O'Brien with an enrolled copy of H.C.R. 51, previously adopted by the Senate on February 18, 1991.

(President in Chair)

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was filed with the Secretary of the Senate:

**P R O C L A M A T I O N
BY THE
GOVERNOR OF THE STATE OF TEXAS**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Austin, Texas
February 18, 1991

TO THE MEMBERS OF THE SENATE AND THE HOUSE OF
REPRESENTATIVES OF THE SEVENTY-SECOND LEGISLATURE,
REGULAR SESSION:

Pursuant to Article III, Section 5, of the Texas Constitution, I, Ann Richards, Governor of the State of Texas, submit the following emergency matters for the immediate consideration by the 72nd Legislature, now convened:

Constitutional amendments and/or legislation
related to the creation of an equitable system of
public school finance.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of February, A.D. 1991.

/s/Ann W. Richards
Governor of Texas

ATTEST:

/s/John Hannah, Jr.
Secretary of State

SENATE JOINT RESOLUTION 19 ON SECOND READING

Senator Parker asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

S.J.R. 19, Proposing a constitutional amendment relating to the use of the available school fund. (Submitted by Governor as an emergency matter)

There was objection.

Senator Parker then moved to suspend the regular order of business and take up **S.J.R. 19** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Dallas, Henderson, Leedom, Sims.

Absent-excused: Truan.

The resolution was read second time and was passed to engrossment by a viva voce vote.

RECORD OF VOTES

Senators Brown and Harris of Dallas asked to be recorded as voting "Nay" on the passage of the resolution to engrossment.

SENATE JOINT RESOLUTION 19 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.J.R. 19** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 4.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Dallas, Henderson, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Leedom, Sims.

Absent-excused: Truan.

The resolution was read third time and was passed by the following vote: Yeas 23, Nays 6.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Sims.

Absent-excused: Truan.

SENATE JOINT RESOLUTION 20 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.J.R. 20, Proposing a constitutional amendment authorizing the equitable distribution among school districts of ad valorem taxes assessed and collected for the support of public free schools. (Submitted by Governor as an emergency matter)

The resolution was read second time.

Senator Parker offered the following committee amendment to the resolution:

Amend S.J.R. 20, Section 2, by striking the language after the word proposition and substituting in lieu thereof the following:

“The constitutional amendment authorizing the redistribution of school district ad valorem taxes to the extent required for the support of an efficient and equitable system of public free schools.”

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

The resolution as amended was passed to engrossment by the following vote: Yeas 23, Nays 6.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Sims.

Absent-excused: Truan.

SENATE JOINT RESOLUTION 20 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.J.R. 20 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Dallas, Henderson, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sims, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Leedom.

Absent-excused: Truan.

The resolution was read third time and was passed by the following vote: Yeas 23, Nays 6.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Sims.

Absent-excused: Truan.

(Senator Brooks in Chair)

GUESTS PRESENTED

Upon recognition, Senator Montford introduced the Texas Game Warden Association delegation seated in the gallery.

The Senate welcomed these guests.

GUESTS PRESENTED

Senator Lucio was recognized and introduced distinguished guests from the Port of Brownsville Navigation District seated in the gallery.

The Senate welcomed these guests.

MOTION TO ADJOURN

On motion of Senator Harris of Dallas and by unanimous consent, the Senate agreed that upon conclusion of the Joint Session today, it would stand adjourned until 2:00 p.m. tomorrow.

(President in Chair)

JOINT SESSION

(To hear address by Mr. William K. Reilly, Administrator of the United States Environmental Protection Agency)

The President announced the time had arrived for the Joint Session as provided for by S.C.R. 6.

The President of the Senate and the Senators present, escorted by the Secretary of the Senate and the Sergeant-at-Arms, proceeded to the Hall of the House of Representatives at 10:00 a.m. to hear the address of the Administrator of the United States Environmental Protection Agency, William K. Reilly.

The President was announced, and on invitation of the Speaker, occupied a seat on the Speaker's Rostrum.

The Senators were announced and were admitted and escorted to seats prepared for them along the aisle.

The Administrator of the United States Environmental Protection Agency, William K. Reilly, accompanied by his party, was announced by the Doorkeeper of the House.

Mr. Reilly's party was escorted to the Speaker's Rostrum by Senators Brown, Bivins, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom and Ratliff on the part of the Senate and Representatives Saunders, Alexander, Harris, Hightower, Holzheuser, Jackson, Kuempel, Oakley and A. Smith on the part of the House.

The President called the Senate to order and announced a quorum of the Senate present.

The Honorable Gib Lewis, Speaker of the House of Representatives, called the House to order, announced a quorum of the House present and stated the purpose of the Joint Session.

Upon introduction by Representative Saunders, Mr. Reilly addressed the Joint Session.

Senator Brown, on behalf of the Senate, presented an enrolled copy of S.C.R. 6 to Mr. Reilly.

MEMORIAL RESOLUTIONS

S.R. 200 - By Glasgow: In memory of John Robert "Jack" Owens of Breckenridge.

S.R. 201 - By Glasgow: In memory of J. W. Nichols of Fort Worth.

S.R. 203 - By Glasgow: In memory of Kimberly Sue Schramm of Lake Dallas.

S.R. 205 - By Glasgow: In memory of Robert Earl Seay of Comanche.

S.R. 206 - By Glasgow: In memory of Charles Thorp of Runaway Bay.

CONGRATULATORY RESOLUTIONS

S.C.R. 45 - By Barrientos: Extending congratulations to Dr. and Mrs. William A. Webb on the occasion of their retirement.

S.R. 199 - By Brown: Extending congratulations to Mr. and Mrs. Orville Flickinger on the occasion of their 50th wedding anniversary.

S.R. 202 - By Glasgow: Paying tribute to Betty Cooke on the momentous occasion of her retirement after more than 20 years of distinguished service as Johnson County District Clerk.

S.R. 207 - By Barrientos: Extending congratulations to the Chap 77 Girls for winning first place in the South Texas Youth Soccer Association State Games, Division II in San Antonio.

S.R. 208 - By Barrientos: Extending congratulations to the Chaps 79-White under-12 boys team of the Chaparral Soccer Club for winning first place at the South Texas Youth Soccer Association State Games in San Antonio.

S.R. 209 - By Turner: Extending congratulations to the T. H. Johnson Elementary School fourth and fifth grade choirs of Taylor for performing "A Tribute To Our Country."

S.R. 211 - By Ellis: Proclaiming February 20, 1991, as "M. E. Foster Elementary School Day."

ADJOURNMENT

The President announced the purpose of the Joint Session had been accomplished and declared the Senate at 10:44 a.m. would stand adjourned until 2:00 p.m. tomorrow, in accordance with a motion previously adopted by the Senate.

**In Memory
of
Marine Captain David R. Herr**

Senator Harris of Tarrant offered the following resolution:

(Senate Resolution 197)

WHEREAS, Marine Captain David R. Herr of Fort Worth, Texas, died tragically in eastern Saudi Arabia on February 2, 1991, while serving his country; and

WHEREAS, The Senate of the State of Texas joins with the citizens of Fort Worth and the entire state in mourning the painful loss of this gallant Texas hero; and

WHEREAS, Captain Herr was a member of the Light Helicopter Attack Squadron 369 based at Camp Pendleton, California; and

WHEREAS, A native of Oklahoma City, Oklahoma, David graduated from Fort Worth Country Day School in 1980 and attended Washington and Lee University in Lexington, Virginia; and

WHEREAS, Captain Herr is remembered for his enthusiasm for life and his pursuit of excellence in all his endeavors; and

WHEREAS, His service to his country was marked by true fidelity and allegiance; his supreme sacrifice in the cause of democracy will constantly remind others of his deep devotion to those ideals Americans cherish; and

WHEREAS, Captain Herr was a loyal friend and exemplary marine; his cherished memory will remain forever in the hearts and minds of all those who knew him; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, hereby honor the life of Captain David R. Herr and extend sincere condolences to the members of his family: his mother and father, Connie Ward Herr and David R. Herr, Sr.; his sister, Sarah Louise Herr; and his grandparents, Mr. and Mrs. Wendell B. Ward; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Marine Captain David R. Herr.

**HARRIS OF TARRANT
MONCRIEF**

The resolution was read.

On motion of Senator Lucio and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Moncrief and by unanimous consent, the resolution was adopted by a rising vote of the Senate.